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October 23, 2013

VIA ECF

The Honorable Paul A. Crotty
U.S. District Court, Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007-1312

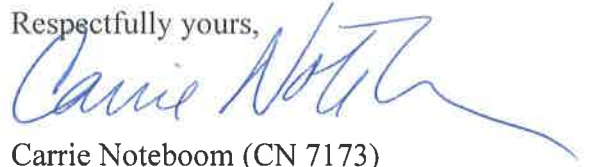
Re: *Residents for Sane Trash Solutions v. U.S. Army Corps of Engineers*, 12-cv-8456
(PAC), and *Kellner v. U.S. Army Corps of Engineers*, 12-cv-8458 (PAC)

Dear Judge Crotty:

I write to alert the Court of a minor revision to the New York City Department of Sanitation's (DSNY) memorandum dated May 29, 2013, entitled "Environmental Review of New Flood Risk Information and Related Proposed Design Changes to East 91st Street MTS and Southwest Brooklyn MTS," which the City previously provided to the Court and to counsel in both actions on May 31, 2013. The revised version is dated October 23, 2013 (annexed hereto as Attachment A), and contains minor revisions on page two, in the second full paragraph under the "Background" heading, to the description of the MTS facility's three-level configuration. These revisions more accurately reflect the building's design.

Specifically, the language was revised to clarify that waste will be tipped from the top tipping level of the facility onto the middle loading level, and then pushed from the loading level through an opening and down into containers located on the bottom pier level of the facility, where the containers will also be sealed. The prior version of the memorandum indicated that the containers would be filled and sealed on the loading level, which is not accurate. The revisions to the description of the facility's configuration do not alter the environmental review analysis and conclusions of the memorandum, which remain unchanged. The City will be submitting the revised version of the memorandum as an exhibit in support of its motion for summary judgment. The revised version of the memorandum will also be posted on DSNY's web site. I can provide a tracked changes version of the memorandum upon request.

Respectfully yours,

A handwritten signature in blue ink, appearing to read "Carrie Noteboom", with a long, sweeping horizontal line extending to the right.

Carrie Noteboom (CN 7173)
Assistant Corporation Counsel

cc: All counsel (via ECF)

Attachment A




sanitation

STEVEN N. BRAUTIGAM
Assistant Commissioner

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MEMORANDUM

Date: May 29, 2013; rev. 10/23/2013

From: Steven Brautigam 

To: Solid Waste Management Plan CEQR File #03-DOS-004Y

Re: Environmental Review of New Flood Risk Information and Related Proposed Design Changes to East 91st Street MTS and Southwest Brooklyn MTS

Introduction

This memorandum is prepared by the Department of Sanitation (DSNY) in its capacity as Lead Agency under the State Environmental Quality Review Act and the New York City Environmental Quality Review Procedure, and supplements the April 1, 2005 Final Environmental Impact Statement (FEIS) for the New York City Comprehensive Solid Waste Management Plan (SWMP), and the July 2012 Technical Memorandum that considered new information and changes in circumstances since the issuance of the FEIS. In particular, pursuant to 6 NYCRR §617.9(a)(7), this memorandum discusses proposed changes to two facilities of the SWMP: the proposed DSNY Marine Transfer Station (MTS) to be built and operated in the East River at East 91st Street ("the 91st Street MTS") and the Southwest Brooklyn MTS, to be built and operated on the waterfront of Bensonhurst, Brooklyn.

The 91st Street MTS is proposed to accept residential waste collected by DSNY from Manhattan Districts 5, 6, 8, and 11. The Southwest Brooklyn MTS would accept residential waste collected by DSNY from Brooklyn Districts 11, 12, 13 and 15. Both facilities would be available to accept a certain amount of commercial waste at night. As further discussed in the FEIS, the waste processed at each facility will be placed into fully enclosed shipping containers inside the facility, and then moved out of the building onto the pier, from which the containers will be loaded onto barges for transport to an offloading facility in New York Harbor and then transported by railroad to disposal facilities. The destination facilities for the 91st Street MTS waste are proposed to be waste-to-energy resource recovery facilities in Niagara, New York, and in Chester, Pennsylvania. The 91st Street MTS Facility was approved for its building permit on October 24, 2012. The Southwest Brooklyn MTS has not yet received a building permit. This memorandum considers proposed design modifications to both facilities to further address potential flood risks in the aftermath of the October 26, 2012 storm surge from Tropical Storm Sandy, which produced flooding in excess of the 100-year base flood elevation (BFE) applicable to the two facility sites from 2007. It also considers associated emergency Department of Buildings regulations and a revised advisory Federal FEMA flood insurance map. As discussed below, this review concludes that the project

modifications and other new information would not result in a significant adverse impact to the environment beyond what was previously considered in the project's FEIS and subsequent *CEQR Technical Memorandum* of July 2012. Therefore, a Supplemental Environmental Impact Statement is not warranted.

Background

DSNY previously considered the risk of flooding to both facilities. As noted in the FEIS, both facilities are within the 100-year flood plain. The East 91st MTS site is in Zone A, the area that is not subject to additional wave action, based on the FEMA flood insurance maps created in 1983 and left unchanged in the last update of 2007. The Southwest Brooklyn site straddles the boundary between Zone A and Zone V, which is the area of sustained wave action that can result in additional flooding beyond levels in Zone A.¹ A Waterfront Revitalization Plan consistency review by DSNY in 2005 found that the two facilities would not significantly hinder the City's WRP policy goal of minimizing risks from flooding. This consistency review was in accord with the consistency review and determination by the City Planning Commission in its capacity as the City's Coastal Zone Commission, issued in 2005 in connection with the Uniform Land Use Review Procedure (ULURP) applications for the site selections for the East 91st Street MTS and Southwest Brooklyn MTS, respectively.

The design of the MTS's at both facilities is intended to ensure that floodwaters would not encroach on solid waste being processed at the facility, in accordance with New York State solid waste management facility regulations. The facilities are designed to have three levels: the tipping level, the loading level and the pier level. Trucks enter at the top, or tipping, level, and tip their loads down to the loading level. Waste then gets pushed into an opening down and into containers located on the bottom, or pier level, where the containers are also sealed. The loading level for the processing of loose waste would be located approximately 16 feet above the 100-year flood plain shown on the 2007 FEMA flood insurance maps, and also well above even the 500-year flood plain. Only waste that is securely enclosed in containers would be removed from the building's pier level of the facility and temporarily staged outside on the pier deck, which was designed to be one foot above the Base Flood Elevation. This design would ensure that loose solid waste would not be at risk of encountering flood waters. In addition, DSNY identified operational measures that would further minimize risks from flooding. Waste collections would cease 48 hours prior to a predicted flooding event, allowing the facility to process waste and be empty 24 hours in advance of the flood. All shipping containers of waste would be removed from the facility well in advance, and the barge would be secured elsewhere in the harbor until the flood danger had passed.

Additional Flood Proofing Studies

Following the Tropical Storm Sandy storm surge, which coincided with a high tide, the City had its consultants Greeley & Hansen prepare a study of the actual storm surge levels from Sandy with respect to all four MTS facility sites, including the North Shore MTS and the Hamilton Avenue MTS, both of which are nearing construction completion. The resulting report was entitled *Superstorm Sandy: Storm Tide Flood Damage and Recommendations- Preliminary Report* (January 2013- see Attachment 1).

¹The Southwest Brooklyn MTS facility's design calls for a king pile wall which would limit wave action, making the Zone A designation applicable for design purposes. See *Flood Protection Conceptual Design Report* at pp. 3-4.

The City also asked Greeley & Hansen to provide recommendations as to design modifications and other measures that could further harden the two unbuilt facilities--East 91st Street MTS and Southwest Brooklyn MTS--against disruptions from future coastal flooding. The resulting report was *Flood Protection Conceptual Design Report* (May 2013-- see Attachment 2). The consultants found that, based on available data, the Sandy storm surge either approached or exceeded the proposed 91st Street MTS pier elevation, with estimated levels ranging from eight inches short of the pier level to six inches above it. The Sandy storm surge would have been approximately one foot six inches below the pier level of the Southwest Brooklyn MTS.

The *Flood Protection Conceptual Design Report* took into consideration FEMA's newly proposed (February 25, 2013) Advisory Base Flood Elevation (ABFE) maps, as well as emergency Department of Buildings regulations issued January 31, 2013 that mandated design of new structures to maintain one foot of freeboard above the current (2007) Base Flood Elevation. DSNY's application for a building permit for the East 91st Street MTS was approved October 24, 2012-- prior to Tropical Storm Sandy and prior to issuance of the new Department of Buildings regulations. This Facility was designed with the pier level achieving six inches of freeboard above the 2007 Base Flood Elevation. The Southwest Brooklyn MTS current design meets the 2007 Base Flood Elevation standard. However, if the ABFE map were to become the design standard, the pier level of the Southwest Brooklyn MTS would be one inch short of the ABFE.

Proposed Facility Modifications

DSNY intends to adopt the design modifications recommended in the Greeley & Hansen May 2013 report. For the East 91st Street MTS, this would involve perimeter floodproofing measures, and dry floodproofing the rooms with critical lifesaving equipment, as further described below. Certain additional measures would be taken to protect outdoor equipment from flooding risk. The Southwest Brooklyn MTS would be raised by one inch to achieve the ABFE. These modifications, which are estimated to cost approximately \$2,380,000, would require modifications of the facilities' respective New York State Department of Environmental Conservation Solid Waste Management Facility permits. The modification would be considered a "minor" modification, as it will not change the facility's capacity, or exceed other thresholds for requiring a full "major" permit modification.

East 91st Street MTS

The Greeley & Hansen April 2013 report developed a Revised Design Flood Elevation (Revised DFE) based on the ABFE released by FEMA in February 2013, which have not been finalized. The current design's pier level is 5.59 feet (67.08 inches) beneath the Revised DFE the City is proposing to follow. Based on the current design, a flood event at the ABFE could damage critical equipment throughout the MTS. Equipment in the Electrical Room, including the main Switchgear and control panels would need to be demolished and replaced. Equipment in the Fire Pump/Meter Room including the fire protection pumps, fire pump controllers and air compressors would need to be replaced. Replacement of this equipment would cause a substantial delay in reopening of the facility, potentially six months or more. Therefore, floodproofing measures are proposed.

Specifically, dry perimeter floodproofing is attained by use of flood-damage-resistant materials and techniques that render the dry floodproofed portions of a structure substantially impermeable to the passage of floodwater. Dry floodproofing would involve flood protection devices including flood planks

and flood shields at every opening that is beneath the Revised DFE, as well as revised construction methods to ensure that wall material and construction joints are watertight. The facility has 6 roll-up door openings, 8 standard door openings, and 17 window openings that are beneath the Revised DFE. Perimeter floodproofing would require little interior modifications and would be able to protect all critical equipment within the building when deployed properly.

In addition, floodproofing of rooms with equipment critical for life safety will be done to supplement the dry perimeter floodproofing first line of defense. This will give an extra measure of confidence that such critical equipment will be adequately protected. The five rooms at the pier level containing such equipment are the Fire Pump/Meter Room, HVAC Room, Electrical Room, Building-Wide Alarm System Room, and Security Room. Sliding watertight doors with pneumatic seals would be installed. One door would have a manual flood shield installed when needed instead, due to space constraints.

The alternative of modifying the East 91st Street MTS facility design to raise it so as to maintain one foot of freeboard for the pier level above the ABFE would require raising the pier level by 68 inches, which would be a major redesign. Greeley & Hansen did not recommend this plan, but rather the foregoing floodproofing measures instead.

Additional protective measures were recommended for critical equipment such as emergency generators, the gantry crane, and marine equipment. These will be implemented as well.

Southwest Brooklyn MTS

This facility would be able to meet the ABFE, if that were to become the required design standard, merely by raising the facility up by one inch. This is proposed to be done.

Environmental Review Discussion

From an environmental review perspective, all of the proposed changes are intended to further safeguard the two facilities, keep them operational, and thereby minimize the risk of disruption to the city's integrated waste management system and prevent spillage of waste to the environment in the event of major coastal flooding. The modifications would not increase the potential for the facility to cause significant traffic, noise, air quality, odor, or water quality impacts beyond what was previously studied. None of these modifications individually or collectively are reasonably foreseeable to result in a significant adverse impact to any other environmental review category, based on a review of the standards contained in the *2012 City Environmental Quality Review Technical Manual*.

Conclusion

In view of the foregoing, the Department of Sanitation concludes that the proposed project modifications to enhance floodproofing of the East 91st Street MTS and the Southwest Brooklyn MTS in the wake of Tropical Storm Sandy and related new information on flood risks are feasible and will enable the facilities to meet applicable construction and permit standards. They would not result in a significant adverse impact to the environment beyond what has been studied in the SWMP FEIS previously. Therefore, the preparation of a Supplement Environmental Impact Statement is not warranted.

Attachments (2)